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IN THE

Supreme Court of The United States

OCTOBER TERM, 1960
NO. 200

TRAYTON L. LATHROP,
Appellant,

-vs-

JOSEPH D. DONOHUE,
Appellee.

On Appeal from the Supreme Court of Wisconsin

BRIEF OF AMICUS CURIAE THE FLORIDA BAR

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PRELIMINARY STATEMENT

The Florida Bar was created by rule of the Supreme Court of Florida in the exercise of its inherent powers on June 7, 1949. Petition of Florida Bar Association, 40 So. 2d 802 (Fla. 1949).

Subsequent to that time Article V of the Constitution of Florida relating to the judicial department has been revised and in the revision the exclusive jurisdiction of the Supreme Court of Florida over admission to the practice of law and the discipline of persons admitted has been expressly recognized.

The Florida Bar operates under the Integration Rule of the Supreme Court of Florida, carries on extensive programs of service to the public and the profession, and has made outstanding contributions to the improvement of the administration of justice and has great interest in the question of the validity of rules of courts creating an integrated bar.

STATEMENT OF THE CASE

We adopt as part of this brief the Statement of the Case set forth at pages 3-5 in the Brief of Appellee in support of his Motion to Dismiss.

QUESTION PRESENTED

Do the orders and rules of the Supreme Court of Wisconsin integrating the bar of that state violate any of appellant's rights under the Constitution of the United States.

SUMMARY OF ARGUMENT AND PRINCIPLES OF LAW RELIED UPON

(1) The rights of freedom of association, freedom of speech and publication, and protection of property are not absolute, but are relative and may be reasonably limited, restricted or restrained by appropriate authority in the public interest.

(2) The practice of law is affected with public interest and the state acting through its courts or legislature, or both, may impose such reasonable limitations, restrictions or restraints, or may impose such requirements upon those admitted to the practice of law as are reasonably designed to serve the public interest, safeguard the administration of justice, enhance the prestige of the profession, maintain high standards of ethical conduct, advance the science of jurisprudence and achieve those purposes and objectives essential to the people's welfare.

(3) The requirement that persons admitted to practice law in a state shall be members of the integrated bar of that state and pay reasonable dues thereto, is a reasonable requirement and not violative of any of such persons' rights under the Constitution of the United States.

ARGUMENT

I. THE RIGHTS OF FREEDOM OF ASSOCIATION, FREEDOM OF SPEECH AND PUBLICATION, AND PROTECTION OF PROPERTY ARE NOT ABSOLUTE, BUT ARE RELATIVE AND MAY BE REASONABLY LIMITED, RESTRICTED OR RESTRAINED BY APPROPRIATE AUTHORITY IN THE PUBLIC INTEREST.

This principle of law is so fundamental and well-established that it requires neither extensive restatement nor citation of numerous authorities for its support.

This Court and other authorities have recognized and established this principle as an integral part of the law of the land.

Right of Free Association

In *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 391, 392 (1936) this Court said:

"The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is

reasonable in relation to its subject and is adopted in the interests of the community is due process.

* * * * * *

"'But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. *Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.*' Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 565." (Emphasis ours)

Protection of Property

In *Interstate Consolidated Street Railway Company v. Massachusetts,* 207 U. S. 79, 87 (1907) this Court said:

"The obverse way of stating this power in the sense in which I am using the phrase would be that *constitutional rights, like others, are matters of degree,* and that the great constitutional provisions for the protection of property are not to be pushed to a logical extreme, but must be taken to permit the infliction of some fractional and relatively small losses without compensation, for some, at least, of the purposes of wholesome legislation." (Emphasis ours)

Freedom of Speech and Publication

In *Near v. Minnesota,* 283 U. S. 697, 708 (1930) this Court said:

"*Liberty of speech* and of the press *is* also *not an absolute right*, and the state may punish its abuse. Whitney v. California, 274 U. S. 357, 362, 373, supra; Stromberg v. California, (283 U. S. 359)." (Emphasis ours)

The argument of appellant seems to be that he has two absolute rights involved in this case, one to practice law before the courts of the state, and the other to be free from requirements and restraints by the Supreme Court of the state. It seems to us that appellant has overlooked an applicable fundamental principle which was graphically enunciated by Mr. Justice Holmes, for the Supreme Court of Massachusetts, in *McAuliffe v. New Bedford*, 155 Mass. 216, 29 NE 517 (1892).

In that case a policeman in New Bedford accepted employment as such under civil service rules that prohibited city employees engaging in political activities. Upon being discharged for violating the prohibition, the policeman in question sued for reinstatement on the theory that the rule was invalid because it infringed upon his constitutional right of freedom of speech. The fallacy of this reasoning was exposed and the theory disposed of by Mr. Justice Holmes in the famous epigram:

"The Petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

II. THE PRACTICE OF LAW IS AFFECTED WITH PUBLIC INTEREST AND THE STATE, ACTING THROUGH ITS COURTS OR LEGISLATURE, OR BOTH, MAY IMPOSE SUCH REASONABLE LIMITATIONS, RESTRICTIONS OR RESTRAINTS OR MAY IMPOSE SUCH REQUIREMENTS UPON THOSE ADMITTED TO THE PRACTICE THEREOF AS ARE REASONABLY DESIGNED TO SERVE THE PUBLIC INTEREST, SAFEGUARD THE ADMINISTRATION OF JUSTICE, ENHANCE THE PRESTIGE OF THE PROFESSION, MAINTAIN HIGH STANDARDS OF ETHICAL CONDUCT, ADVANCE THE SCIENCE OF JURISPRUDENCE AND ACHIEVE THE PURPOSES AND OBJECTIVES ESSENTIAL TO THE PEOPLE'S WELFARE.

The stated purposes of the Supreme Court of Wisconsin in its orders integrating the bar of that state are:

"Section 2. Purposes. The purposes of the association shall be to aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relations of the bar to the public, and to publish information relating thereto; to the end that the public responsibilities

of the legal profession may be more effectively discharged." (Tr. p. 8)

These purposes and objectives are the historic and traditional purposes and objectives of the profession of the law and from the foundation of the Republic have received the sanction of the courts, the approval of our legislative bodies and the approbation of the public.

Members of the bar are officers of the courts, indispensable agents in the administration of justice, an integral part of the judicial department of government and every function they perform, every responsibility they assume and every duty they discharge is affected with public interest.

The confidence of the public in the courts is an essential ingredient in our system of administration of justice and the confidence of the public in the integrity of the bar and its membership is an integral part of that ingredient.

This confidence of the public in the bar and its membership, being essential to the confidence of the public in the courts, must be established and maintained if our system of administration of justice is to endure.

The court's control of the professional life of an attorney arises from the relation of the the attorney to the courts, his responsibilities to the litigants before the courts and the indispensable part the attorney has in the functions of the courts.

The power, duty and responsibility of the courts to limit those who appear before it as attorneys to those who have attained to a required degree of learning and proficiency in the law and have established their character and integrity to the satisfaction of the court has been recognized from time immemorial.

The power of the courts to prescribe rules of conduct for attorneys, to promulgate standards of ethical behavior and to enforce those rules and regulations necessary for the preservation of the integrity of the bar is a power beyond question.

It has been well said that "membership in the bar is a privilege burdened with conditions." A universally recognized condition is that an attorney shall abide by the canons of ethics of the profession and conduct his professional life in accordance therewith.

Even the most casual study of the canons universally imposed and accepted for conduct of attorneys demonstrates that they limit and restrict freedom of action, speech, and contract. An attorney cannot contract to represent conflicting interests; he cannot solicit clients; he cannot advertise his qualifications or achievements and even his comments on matters of public interest in which he is professionally engaged must be limited to a simple recitation of facts as they appear in the records and papers on file in the court.

No one could successfully gainsay the wisdom of these restrictions. They have been universally enforced by the courts for centuries without dissent because they

are essential to the prestige of the courts, the dignity and integrity of the bar and the proper functioning of the lawyers in the administration of justice.

This Court has said in *Randall v. Brigham*, 74 U. S. (7 Wall) 523, 540 (1868);

> "The authority of the court over its attorneys and counselors is of the highest importance. They constitute a profession essential to society. Their aid is required, not merely to represent suitors before the courts, but in the more difficult transactions of private life. The highest interests are placed in their hands and confided to their management. The confidence which they receive and the responsibilities which they are obliged to assume, demand not only ability of a higher order, but the strictest integrity. The authority which the courts hold over them, and the qualifications required for their admission, are intended to secure these qualities."

In *Ex Parte A. H. Garland*, 71 U. S. (4 Wall) 333, 378 (1866) the Court said:

> "The profession of an attorney and counselor is not like an office created by an act of congress, which depends for its continuance, its powers and emoluments, upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. *** They are officers of the court; admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character. *** The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein. From its entry *the parties*

become officers of the court and are responsible to it for professional misconduct. (Emphasis ours)

In the case of *Theard v. U. S.*, 354 U. S. 278, 281 (1957), the Court said:

> "The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals. " 'Membership in the bar is a privilege burdoned with conditions' (*Matter of Rouss*, [221 NY 81, 84, 116 NE 732]) The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." People ex rel. Karlin v. Culkin, 248 NY 465, 470, 471, 162 NE 487, 489."

It therefore appears conclusively that the rights of freedom of association, freedom of speech and property rights are not absolute but relative rights and that courts have the power, duty and responsibility to regulate the conduct of attorneys, to impose and enforce such restraints, restrictions and limitations or to make and enforce such requirements relative thereto as shall be reasonably necessary or expedient to achieve those objectives which are universally recognized as essential to proper functioning of the bar and the members thereof as an indispensable part of our system of administration of justice.

These two propositions bring us to the crux of this case. Is the requirement that an attorney be a member

of an integrated bar and that he pay dues in support thereof such an arbitrary requirement as to justify this court in declaring such requirement violative of rights guaranteed by the Constitution of the United States? As set forth under Point III hereafter, we submit that such requirement is reasonably necessary and appropriate for the accomplishment of a legitimate object within the power, duty and responsibility of the court having jurisdiction.

III. THE REQUIREMENT THAT PERSONS ADMITTED TO PRACTICE LAW IN A STATE SHALL BE MEMBERS OF THE INTEGRATED BAR AND THAT THEY SHALL PAY REASONABLE DUES THERETO IS A REASONABLE REQUIREMENT AND NOT VIOLATIVE OF ANY OF SUCH PERSONS' RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES.

This Court has within the last few years had before it three cases of significance in the matter of state action in relation to attorneys. It is evident that this Court has given careful study to the relation of attorneys to the courts, the reasonableness of state action, and particularly the matter of limits of review by this Court of such matters.

In *Schware v. Board of Bar Examiners*, 353 U. S. 323 (1957), this Court held that it had jurisdiction to review the action of the Supreme Court of New Mexico in refusing to admit an applicant to the practice of law on the grounds that he had not established his good character to the satisfaction of the state court.

This Court held that the grounds relied upon by the state court had no reasonable relationship to the issue before it, that its action in denying the applicant admission to the bar was not justified by evidence in the record and therefore such action was arbitrary and violative of the due process provisions of the Constitution of the United States, and that this Court had jurisdiction to review the action of the state court and order that the applicant be admitted to the bar.

In *Konigsberg v. State Bar of California*, 353 U. S. 252 (1957), this Court again reviewed the scope of state actions in relation to admission of applicants to the bar and by divided opinion again held in effect that its review was and is limited to whether or not the state action was so unrelated in reason to the matter before it and so arbitrary as to deprive the applicant of rights guaranteed by the Constitution of the United States.

In *Theard v. United States*, 354 U. S. 278 (1957), this Court reversed the action of the United States District Court striking an attorney from its rolls. The action of the District Court was based entirely upon the action of the state court disbarring the attorney, and this Court reversed the decision of the District Court on the ground that the action of the state court was not binding upon the federal courts and that the action of the state court was not in accord with "the principles of right and justice."

It seems to us that the rationale of this Court's decisions in the cases cited above is that the state courts have a large discretion in the matter of regulation of admissions to and expulsions from the bar but that actions by the state courts must be reasonably necessary and appropriate to the achievement of the legitimate objective of a bar composed of members who, as individuals, are learned in the law, possessed of good character and otherwise qualified to be entrusted with the responsibilities that devolve upon them as attorneys.

It seems to us also that it necessarily follows that a state court has a large discretion in regulating the

membership of the bar in the aggregate in such manner and by such means and by the imposition of such requirements as shall be reasonably calculated to achieve the legitimate objective of a state bar qualified, equipped and authorized to perform those functions and discharge those responsibilities which traditionally and historically are the functions and responsibilities of the organized bar.

It seems readily apparent that the day and age has long since passed when an attorney discharged in full his responsibilities to the courts, to the profession and to society when he discharges his responsibilities to his individual clients. In this age of social consciousness, it seems to us that larger duties devolve upon the bar which cannot be discharged by individual effort, but must be discharged by the profession acting in concert through an organization efficiently designed to discharge the responsibilities of the profession.

As individual lawyers we may strive for improvement in the administration of justice, we may exert our energies to raise the standards of ethical conduct, and we may individually give of our best to establish the profession in the confidence of the public but without the aid of our brothers of the bar acting in cooperation with us through effective organization we would fall far short of what in this new age is not only desirable but absolutely necessary.

The state courts have in increasing numbers found that the integrated bar is the best means yet devised and most reasonably adapted to the achievement of the

legitimate objective of providing an organization of the bar for effective discharge of the responsibilities of the bar.

Such action by such a large number of state courts brings the matter to this court with "title deeds of high respect."

The question of the validity of state action in relation to compulsory or integrated bar membership has never been before this Court, but we may look to the reason and logic of the decisions of this Court in comparable or analogous fields of law for precedent.

This Court has repeatedly held that the police power is only another name for that power which resides in every sovereign to pass all laws for the internal regulation and government of the state and that it comprises that portion of the sovereignty of the state which is not surrendered by the Federal Constitution to the Federal Government. *Mutual Loan Co. v. Martell*, 222 U. S. 224 (1911), *Slaughter-House Cases*, 83 U. S. (16 Wall) 36 (1872).

The Fourteenth Amendment was not designed and does not interfere with, curtail, destroy or take from the states the right and duty to exercise the police power nor limit the subjects to which it extends. *Terrace v. Thompson*, 263 U. S. 197 (1923); *Mugler v. Kansas*, 123 U. S. 623 (1887).

Police power extends to laws which promote the general welfare. *West Coast Hotel Co. v. Parrish*, 300

U. S. 379 (1936); *Nebbia v. New York*, 291 U. S. 502 (1933).

The states have the power under the police power to regulate any and all kinds of businesses, occupations and professions. *Nebbia v. New York*, 291 U. S. 502 (1933); *New State Ice Co. v. Liebmann*, 285 U. S. 262 (1931).

The power of the states to regulate or impose restrictions upon or make requirements relating to a business or profession is unquestioned. *McCloskey v. Tobin*, 252 U. S. 107 (1920); *Truax v. Raich*, 239 U. S. 22 (1915).

The limitation upon state action under the police power is that such action must be reasonable, be related to some subject within the power to regulate, be appropriate to the accomplishment of a legitimate objective, and must not arbitrarily or unreasonably impose upon the rights guaranteed by the Constitution of the United States. *Lemieux v. Young*, 211 U. S. 489 (1909); *New State Ice Co. v. Liebmann*, 285 U. S. 262 (1931).

State action under the police power comes to this Court with a presumption of validity and this Court will resolve every reasonable doubt in favor of validity of such action and in the absence of facts in the record to the contrary will assume the action of the state necessary and reasonable. *O'Gorman & Young v. Hartford F. Ins. Co.*, 282 U.S. 251 (1931).

Probably the most succinct statement of the proper operation of the police power and the scope of review

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v.

JOSEPH D. DONOHUE, APPELLEE.

APPEAL FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE STATES OF ARIZONA, IDAHO, OREGON, UTAH AND WYOMING AS AMICI CURIAE

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President Wyoming State Bar

thereof by this Court was made by Mr. Justice Holmes in *Noble State Bank v. Haskell*, 219 U. S. 104 (1911), when he said:

> "Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power."

It would therefore appear from the logic and reasoning of this Court as evidenced by the principles enunciated in the foregoing cases that a state may, in the exercise of its police power, impose such reasonable restrictions upon any business or profession necessary to achieve or accomplish a legitimate objective.

Let us now examine another analagous field of law.

From the earliest days of the Union, it has been recognized that congress many regulate and impose restrictions upon federal employees and officers, even though such regulations and restrictions infringe upon the rights guaranteed by the Federal Constitution. *Ex Parte Curtis*, 106 U. S. 371 (1882); *United States v. Wurzbach*, 280 U. S. 396 (1930).

In the more recent case of *United Public Workers v.*

Mitchell, 330 U. S. 75, 95, 96, 100, 101 (1947), this Court upheld the Hatch Act and in so doing said:

> "Thus we have a measure of interference in the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment. Appellants' objections under the Amendments are basically the same.
>
> "We do not find persuasion in appellants' argument that such activities during free time are not subject to regulation even though admittedly political activities cannot be indulged in during working hours. The influence of political activity by government employees if even in its effects on the service, the employees or people dealing with them, is hardly less so because that activity takes place after hours. Of course, the question of the need for this regulation is for other branches of government rather than the courts. Our duty in this case ends if the Hatch Act provision under examination is constitutional.
>
> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolutes. The requirements of residence and age must be met. The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originally in the states and the people. Therefore, when objection is made that the exercise of a federal

power infringes upon rights reserved by the Ninth and Tenth Amendments, the inquiry must be directed toward the granted power under which the action of the Union was taken. If granted power is found, necessarily the objection of invasion of those rights, reserved by the Ninth and Tenth Amendments, must fail. Again this Court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of government.

"As pointed out hereinbefore in this opinion, the practice of excluding classified employees from party offices and personal political activity at the polls has been in effect for several decades. Some incidents similar to those that are under examination here have been before this Court and the prohibition against certain types of political activity by office holders has been upheld. The leading case was decided in 1882. Ex parte Curtis, 106 U. S. 371, 27 L ed 232, 1 S Ct 381. There a subordinate United States employee was indicted for violation of an act that forbade employees who were not appointed by the President and confirmed by the Senate from giving or receiving money for political purposes from or to other employees of the government on penalty of discharge and criminal punishment. Curtis urged that the statute was unconstitutional. This Court upheld the right of Congress to punish the infraction of this law. The decisive principle was the power of Congress, within reasonable limits, to regulate, so far as it might deem necessary, the political conduct of its employees."***

* * *

"Appellants urge that federal employees are protected by the Bill of Rights and that Congress may

not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work.' None would deny such limitations on congressional power but, because there are some limitations, it does not follow that a prohibition against acting as ward leader or worker at the polls is invalid. A reading of the Act and Rule 1, notes 2 and 6, supra, together with the Commission's determination shows the wide range of public activities with which there is no interference by the legislation. It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. Expressions, public or private, on public affairs, personalities and matters of public interest, not an objective of party action, are unrestricted by law so long as the Government employee does not direct his activities toward party success.

"It is urged, however, that Congress has gone further than necessary in prohibiting political activity to all types of classified employees. It is pointed out by appellants 'that the impartiality of many of these is a matter of complete indifference to the effective performance' of their duties. Mr Poole would appear to be a good illustration for appellants' argument. The complaint states that he is a roller in the Mint. We take it this is a job calling for the qualities of a skilled mechanic and that it does not involve contact with the public. Nevertheless, if in free time he is engaged in political activity, Congress may have concluded the the activity may promote or retard his advancement or preferment with his superiors. Congress may have thought that Government employees are handy elements for leaders in political policy to use in building a politi-

cal machine. For regulation of employees it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the public service. There are hundreds of thousands of United States employees with positions no more influential upon policy determination than that of Mr. Poole.

"Evidently what Congress feared was the cumulative effect on employee morale of political activity by all employees who could be induced to participate actively. It does not seem to us and unconstitutional basis for legislation."

If Congress has the power to enact legislation to limit the exercise of constitutional rights of a person employed as a mechanic in the Mint because the "presence of government employees *** in the ranks of political party workers is bad" then it appears to us that the highest court of a state has equal power to impose restrictions and restraints upon those admitted to practice law in order to coordinate the efforts of the profession to better achieve and accomplish those purposes which only the organized bar can achieve and accomplish in service to the public, service in the administration of justice, and service to the profession.

Let us now examine another field of law which may be of aid in the proper determination of this cause.

In *Railway Employees Dept. v. Hanson*, 351 U. S. 225, 233, 234 (1956), this Court had before it the question of the validity of an act of Congress permitting a railroad and a labor organization to enter into a "union or closed shop" contract and the further question of whether or

not such act of Congress superseded the "right to work" laws of a state.

In disposing of these two questions, this Court said:

"In the absence of conflicting federal legislation, there can be no doubt that it is within the police power of a State to prohibit the union or the closed shop. We so held in *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.* 335 U. S. 525, 93 L ed 212, 69 S Ct 251, 260, 6 ALR 2d 473, and in *A. F. of L. v. American Sash & Door Co.* 335 U. S. 538, 93 L ed 222, 69 S Ct 258, 260, 6 ALR 2d 481, against the challenge that local 'right to work' laws, including Nebraska's, violated the requirements of due process. But the power of Congress to regulate labor relations in interstate industries is likewise well-established. Congress has authority to adopt all appropriate measures to 'facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation.' *Texas & N.O.R. Co. v. Brotherhood of R. & S.S. Clerks,* 281 U. S. 548, 570, 74 L ed 1034, 1046, 50 S Ct 427. These measures include provisions that will encourage the settlement of disputes 'by inducing collective bargaining with the true representative of the employees and by preventing such bargaining with any who do not represent them.' (*Virginian R. Co. v. System Federation, R.E.D.* 300 U. S. 515, 548, 81 L ed 789, 800, 57 S Ct 592), and that will protect the employees against discrimination or coercion which would interfere with the free exercise of their right to self-organization and representation. *NLRB v. Jones & L. Steel Corp.* 301 U. S. 1, 33, 81 L ed 893, 909, 57 S Ct 615, 108 ALR 1352. Industrial peace along the arteries of commerce is a legitimate objective; and Congress

has great latitude in choosing the methods by which it is to be obtained.

"The choice by the Congress of the union shop as a stabilizing force seems to us to be an allowable one. Much might be said pro and con if the policy issue were before us. Powerful arguments have been made here that the long-run interests of labor would be better served by the development of democratic traditions in trade unionism without the coercive element of the union or the closed shop. Mr. Justice Brandeis, who had wide experience in labor-management relations prior to his appointment to the Court, wrote forcefully against the closed shop. He feared that the closed shop would swing the pendulum in the opposite extreme and substitute 'tyranny of the employee' for 'tyranny of the employer.' But the question is one of policy with which the judiciary has no concern, as Mr. Justice Brandeis would have been the first to concede. Congress, acting within its constitutional powers, has the final say on policy issues. If it acts unwisely, the electorate can make a change. The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which congress exercises." ***

We submit that the above principles and precedents control the case at bar and establish without question the power of the Supreme Court of Wisconsin to create an integrated bar in that state.

CONCLUSIONS

(1) A state, in the exercise of its sovereign powers, subject to the limitations of the Federal Constitution, has full power to regulate the practicing of law in such state.

(2) The courts of the state may exercise the powers of the state, either as a matter of inherent power or by express delegation of such power, to regulate, control and direct matters relating to the bar of the state and the members thereof.

(3) The rights of free association, freedom of speech and protection of property guaranteed by the Federal Constitution are not absolute rights but are relative only and may be reasonably regulated, modified, or restrained in the public interest to attain a legitimate objective.

(4) State action in the matter of regulation of the state bar comes to this court with a presumption of validity and if it appears that the purpose of such regulation is legitimate, and the means adopted are reasonable, this court will not interfere or disturb the states action.

(5) The action of the Wisconsin Supreme Court is designed to accomplish a legitimate objective; the method adopted to accomplish that objective is reasonable and is within the recognized sphere of state action; is within the permissable limits established by the Fed-

eral Constitution and in accord with constitutional principles enunciated by this court in numerous decisions.

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PROOF OF SERVICE

I hereby certify that copies of this brief have been served upon counsel for appellant and for appellee by mail by depositing the same in a United States Post Office mail box addressed to counsel for appellant as follows: John W. Reynolds, Attorney General of Wisconsin, State Capitol, Madison 2, Wisconsin, and to counsel for appellee as follows: Leon E. Isaksen, Room 305, 122 West Washington Avenue, Madison 3, Wisconsin, the same being the post office addresses of such counsel; that sufficient air mail stamps were placed thereon to insure delivery; that such briefs addressed and stamped as aforesaid were deposited in the United States mail as aforesaid on the 23 day of December, A. D. 1960, in Tallahassee, Florida, at approximately 2 o'clock P.m. of said date.

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